

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of D. S. K. DAVIS, Minor.

UNPUBLISHED

August 19, 2014

No. 319246

Washtenaw Circuit Court

Family Division

LC No. 2011-000128-NA

Before: RONAYNE KRAUSE, P.J., and WILDER and STEPHENS, JJ.

PER CURIAM.

Respondent-father appeals as of right the order terminating his parental rights to the minor child under MCL 712A.19b(3)(g). We affirm.

I

In January 2009, the child was born to respondent and the child's mother, who were living together. Approximately six months afterward, respondent moved to Oklahoma in violation of a parole agreement. Respondent was arrested in early 2010, in Oklahoma, for violating parole and was extradited to Michigan. After serving a short term of incarceration and being released, respondent was arrested again in July 2011, for another violation of parole, and remained incarcerated for the duration of this case.

Meanwhile, the child's mother demonstrated a pattern of unstable housing, substance abuse, and alcoholism. She voluntarily released her parental rights to the child on June 7, 2013, and she is not a party to this appeal.

Following respondent's termination hearing, the trial court concluded that respondent would not be able to provide proper care and custody for the child within a reasonable time. MCL 712A.19b(3)(g). The trial court cited respondent's dependence on crack cocaine and his failure to complete probation for any of his many convictions. In determining that termination was in the child's best interests, the trial court noted that the child needed permanence and stability and that he was currently with a foster family that was willing to adopt him and provide that needed stability. The trial court also noted that respondent had "severely compromised" the emotional ties between him and the child by his "voluntary decision" to violate his parole.

II

Respondent argues that he did not receive reasonable reunification efforts in light of the deficiencies in his case service plan. We review de novo, as questions of law, the interpretation and application of statutes and court rules. *In re Utrera*, 281 Mich App 1, 9; 761 NW2d 253 (2008). Whether respondent received reasonable reunification services involves the trial court's factual findings, which this Court reviews for clear error. MCR 3.977(K); *In re Rood*, 483 Mich 73, 90; 763 NW2d 587 (2009). "A finding is 'clearly erroneous' if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App 444, 450; 781 NW2d 105 (2009). "Generally, when a child is removed from the parents' custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." *Id.* at 462. However, although petitioner "has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered." *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012).

The trial court consistently found that respondent received reasonable reunification efforts. Respondent was incarcerated for the entire duration of the case, which at times limited the services that were available to him. Nonetheless, the record indicates that, while in prison, respondent completed his GED, attended AA and NA meetings, completed a violence prevention program, participated in substance abuse treatment, received a psychological evaluation, received supervised parenting time visitations, and was referred to mental health services, including therapy. Notwithstanding petitioner's "responsibility to expend reasonable efforts to provide services to secure reunification," the record indicates that respondent did not fully satisfy his "commensurate responsibility . . . to participate in the services that are offered." *In re Frey*, 297 Mich App at 248.

Respondent complains that his service plan did not provide any service referrals for the first year of the case and the plan was not feasible. Although the plan does not reflect referrals during the first year of the case, respondent actually received services during that time and, any delay in service referrals was, in part, attributed to respondent's own failure to complete and return Department of Human Services (DHS) documents aimed at determining his service needs. Furthermore, respondent received multiple service referrals throughout the year preceding termination. Any shortcomings in the feasibility of the service plan were primarily attributed to respondent's incarceration rather than negligence on the part of DHS in providing respondent with a service plan. Moreover, as noted above, respondent did not fully participate in all of the recommended services that were made available to him. *In re Frey*, 297 Mich App at 248.

Respondent also complains that his case service plan did not provide parenting time because of his incarceration. But, as soon as respondent requested parenting time, the trial court granted the request and petitioner coordinated visits though the prison. Respondent ultimately received multiple supervised visitations.

Accordingly, on the record before us, the trial court did not clearly err in its finding that petitioner made reasonable reunification efforts. *In re Rood*, 483 Mich at 190.

III

Respondent also argues that the trial court denied him due process by conducting a hearing without his presence “on at least one occasion.” “Whether proceedings complied with a party’s right to due process presents a question of constitutional law that we [would] review de novo.” *In re Rood*, 483 Mich at 91. Nevertheless, “[w]e review unpreserved claims of constitutional error under a plain-error analysis.” *In re VanDalen*, 293 Mich App 120, 135; 809 NW2d 412 (2011), citing *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Under the plain error rule, respondent must show that the trial court committed a plain error and that the error affected her substantial rights, i.e., “that the error affected the outcome of lower court proceedings.” *Carines*, 460 Mich at 763.

“Both the Michigan Constitution and the United States Constitution preclude the government from depriving a person of life, liberty, or property without due process of law.” *In re Beck*, 287 Mich App 400, 401; 788 NW2d 697 (2010) (quotation omitted). “The fundamental requisite of due process of law is the opportunity to be heard.” *In re Rood*, 483 Mich at 92 (quotation omitted). Respondent’s argument is premised on a July 3, 2012 review hearing held approximately 16 months before the termination hearing that he did not attend because he was incarcerated. The record indicates that the trial court did not secure respondent’s presence at the hearing because the court anticipated that respondent would be released from prison by that time. Upon learning that respondent was still incarcerated, the parties agreed to proceed with the hearing as it pertained to the mother. Respondent was represented by counsel during the July 3, 2012 hearing and made no objection. The trial court’s order following the hearing was substantively identical to its previous order. Respondent does not offer any argument on appeal regarding how his absence affected the proceedings, and he therefore fails to establish plain error affecting his substantial rights. *Carines*, 460 Mich at 763.

Affirmed.

/s/ Amy Ronayne Krause
/s/ Kurtis T. Wilder
/s/ Cynthia Diane Stephens